Remarks

Claims 1-17 are pending in the present application, each of which has been rejected in the Office Action dated April 22, 2009. By this paper, Applicant amends claims 5, 6, 10 and 12-16. Applicant respectfully requests reconsideration of the pending claims in view of the following remarks.

Claim Objections

Applicant thanks the Examiner for spotting minor informalities in claims 10, 14 and 16. Appropriate correction has been made.

Section 112 Rejections

The rejections of claims 12-14 under 35 U.S.C. §112, first paragraph, are believed to be moot in light of the amendments contained herein.

Claims 6, 8 and 15-17 stand rejected under 35 U.S.C. §112, second paragraph, as being either indefinite or failing to distinctly claim the subject matter Applicant regards as the invention. The rejections to claims 6 and 15-17 are believed to be moot in light of the amendments contained herein. However, Applicant respectfully traverses the rejection of claim 8.

Dependent claim 8 recites that "the two types of packets can be assembled at the receiver into an original message according to a message identification transmitted within a last packet of at least one of the two types of packets." The Office contends that claim 8 is indefinite because it does not indicate what is meant by "last." (Office Action, p. 3) The Office appears to be improperly equating breadth with indefiniteness. "If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph." MPEP §2173.04. To this end, the primary purpose of

this requirement is to ensure that the claim scope is clear to a person having ordinary skill in the pertinent art so the public is informed of the boundaries of what constitutes infringement of the patent (*i.e.*, the so-called metes and bounds of the claim). MPEP §§ 2171, 2173. In this regard, the Office itself demonstrates the definiteness of claim 8. The Office Action lists a number of possibilities for what may be meant by "a last packet of at least one of the two types of packets." (See Office Action, p. 3.) Although it is possible that the Office did not list every possibility for what is meant by "last," the number is certainly finite and that is all that is required under Section 112, second paragraph.

The Office further contends that claim 8 is indefinite in determining which of the "last packets" is in fact last. (Office Action, p. 12.) Applicant respectfully disagrees. Again, claim 8 recites "a last packet of at least one of the two types of packets." Thus, the message identification can be transmitted only in the last packet of packet type 4u, only in the last packet of packet type 4g, or in the last packet of each packet type (4u and 4g). Therefore, claim 8 is definite.

Accordingly, favorable reconsideration and withdrawal of the rejection of claim 8 under 35 U.S.C. §112, second paragraph, for at least the reasons set forth above is respectfully requested.

Anticipation Rejection

Claims 11 and 15-16 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Appl. Publ. No 2003/0115364, filed by Shu *et al.* (hereinafter "*Shu*"). Applicant respectfully traverses because *Shu* fails to disclose each and every feature of the subject claims.

Independent claim 11 is directed to a method of transmitting electronic data and includes a feature in which the at least two types of packets are "separated physically, spectrally and temporally during transmission of the electronic data." Contrary to the Office's contention, *Shu* fails to disclose either temporal or spectral separation of at least two types of data packets. In support of its contention that *Shu* discloses temporal separation, the Office directs Applicant's

attention to paragraph [0098]. (Office Action, p. 4.) However, *Shu* merely teaches spatial diversification of message traffic, in which each message segment is forwarded to a recipient along a different route, through different areas of the same network. (*Shu*, ¶ [0098].)

In support of its contention that *Shu* discloses spectral separation, the Office directs Applicant's attention to paragraph [0059] and concludes that wireless and optical transmission is indicative of spectral separation. (Office Action, p. 4.) However, *Shu* merely discloses that an entity of data may be transferred via electronic, wireless, and optically based communications. (*Shu*, ¶ [0059].) According to *Shu*, the term entity refers to a file, message, data or data file, not packets of a file, message, data or data file. *Id.* This is further evidenced by the fact that an entity exists independently, by definition. It is the *entity* of data that *is capable of* being transferred via one medium or another. *Shu* does not disclose that the entity is transmitted over different media, much less divided into at least two packet types, each being transmitted over a different medium, in order to obtain the "spectral separation" as suggested by the Office.

Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 11 and associated dependent claims under 35 U.S.C. §102(b) for at least the reasons set forth above is respectfully requested.

Independent claim 15 is directed to a communication system for transmitting electronic data and includes features substantially similar to independent claim 11. Thus, claim 15 is believed to be allowable for at least the same reasons set forth above with respect to claim 11. Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 15 and associated dependent claims under 35 U.S.C. §102(b) is respectfully requested.

Obviousness Rejection

Claims 1, 2, 4-6, 8-10, 12 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Shu* in view of U.S. Patent Appl. Publ. No. 2003/0065656, filed by de la Torre

et. al (hereinafter "*de la Torre*"). Applicant respectfully traverses because the proposed combination fails to teach or suggest each and every feature of the pending claims.

Claim 1 is directed to a method for transmitting electronic data, and includes features substantially similar to independent claim 11. Claim is believed to be allowable for at least the same reasons set forth above with respect to claim 11. In particular, *Shu* fails to teach or suggest either temporal or spectral separation of at least two types of data packets, contrary to the Office's contention. *de la Torre* fails to cure the deficiencies of *Shu*.

Accordingly, favorable reconsideration and withdrawal of the rejection of independent claim 1 and associated dependent claims under 35 U.S.C. §103(a) is respectfully requested.

Although they are allowable by virtue of their dependency of an otherwise allowable base claim, claims 2-10, 12-14, 16 and 17 are also believed to be allowable due to the additional features that they recite. Separate and individual consideration is respectfully requested. For example, claim 8 recites the additional feature wherein "the two types of packets can be assembled at the receiver into an original message according to a message identification transmitted within a last packet of at least one of the two types of packets." Contrary to the Office's contention, *Shu* fails to teach or suggest the aforementioned feature. Rather, the segment identifiers referred to by the Office in *Shu* are attached to *each* segment. (*Shu*, ¶ [0105].)

As another example, claim 9 recites the additional feature wherein "the temporal separation comprises a time shift between transmissions in the two networks produced by the different paths taken for each of the two types of packets." As set forth above, *Shu* fails to disclose or suggest anything about temporal separation of at least two types of packets. *Shu* merely discloses that each message segment is forwarded to a recipient along a different route, through different areas of the same network. (*Shu*, ¶ [0098].) *Shu* does not teach that such "spatial diversification" of message segments produces a time shift between transmissions, either explicitly or implicitly.

Claims 3, 7, 13 and 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Shu* and *de la Torre* in view of U.S. Patent Appl. Publ. No. 2002/0032853, filed by Preston *et. al* (hereinafter "*Preston*"). Applicant respectfully traverses this rejection as well.

Regarding dependent claims 3 and 7, the Office contends that *Preston* discloses that two types of packets are sent via two separate networks containing no common nodes and that devices responsible for forwarding packets in a respective network are each connected to only one network, and directs Applicant's attention to paragraph [0046] and Figure 4. (Office Action, p. 10.) However, neither paragraph [0046] nor Figure 4 teach or suggest either of these features. Paragraph [0046] merely discloses that a segmentation module 240 segments encrypted messages into one or more message segments 260 and a link manager 159 distributes the message segments to selected links according to a link selection methodology. (*Preston*, ¶ [0046].) Figure 4, on the other hand, is simply a conceptual diagram depicting the seven layers of the open system interconnection (OSI) model, a pair of system isolation layers as they relate to the seven OSI layers, and an exemplary application of the *Preston* system to form loosely coupled, ad hoc networks for communications.

Moreover, the Office's reason to combine the cited references is superficial at best. The Office Action states that "[t]he motivation for doing so would be to achieve the application transparency advantages of the system according to Preston." (Office Action, p. 10.) The "transparency" referred to in *Preston* merely relates to intelligent link management that is transparent to software applications so that standard "of the shelf" applications can be effectively deployed in a wireless environment instead of customized application programs that must be designed to interact with the network channel selection apparatus. The transparency of the intelligent link management system to multiple "of the shelf" applications is irrelevant to encrypting or camouflaging data files for secure transmission.

Regarding claim 13, *Preston* also fails to disclose "wherein the at least two separate networks exist independently of one another and contain zero common nodes." Again,

the Office directs Applicant's attention generally to paragraph [0046] and Figure 4 for support. However, paragraph [0046] and Figure 4 are silent as to such features.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the pending claims patentably defines the present invention over the citations of record. Further, the rejected dependent claims should also be allowable for the same reasons as their respective base claims and further due to the additional features that they recite. Separate and individual consideration of the dependent claims is respectfully requested.

Please charge any fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978.

Respectfully submitted,

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